

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
EXECUTIVE OFFICE OF THE MAYOR  
MAYOR'S OFFICE OF LEGAL COUNSEL  
Freedom of Information Act Appeal: 2022-223**

January 25, 2023

**VIA ELECTRONIC MAIL ONLY**

Ms. Chelsea Lewis

RE: FOIA Appeal 2022-223

Dear Ms. Lewis:

This letter responds to the administrative appeal that you have submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Code §§ 2-531, *et seq.* (“DC FOIA”). In your appeal, you have challenged the response of the District of Columbia Public Library (“DCPL”) to your DC FOIA request.

Background

On August 22, 2022, you submitted a DC FOIA request to DCPL, identified as 2022-FOIA-09173, which sought the following:

All audio and/or visual surveillance depicting the interior and exterior of the Anacostia Library located at 1800 Good Hope Rd SE, Washington, D.C., DC 20020, including but not limited to all entrances; all exits; the lower level meeting room; parking lot, front desk and entire lower level. [from August 4, 2022].

DCPL responded to your request on September 9, 2022 by advising you,

[t]he DC Public Library’s Department of Public Safety is no longer the custodian of record for video footage from the Anacostia Neighborhood Library for the date of August 4, 2022. This footage is evidence for case no. 2022 CF1 004514, United States Vs. PORTER, JESSE MCL, MPD CCN#: 22111774.

On September 23, 2022, you filed an appeal with this Office asserting DCPL has an obligation to make the records available given its “implicit admission that the requested records were in its possession at the time the FOIA request was made.”

We notified DCPL of your appeal on September 26, 2022 and requested a response. DCPL responded on September 30, 2022 explaining that while it initially arranged to transfer the video to MPD for processing, it has subsequently learned there is a pending investigation regarding the requested material. As a result, DCPL did not forward the video and has denied

your request pursuant to D.C. Code § 2-534(3)(A)(i).

### Discussion

It is the public policy of the District of Columbia government that “all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees.” D.C. Code § 2- 531. In aid of that policy, DC FOIA creates the right “to inspect ... and ... copy any public record of a public body . . .” D.C. Code § 2-532(a). The right to examine public records is subject to various exemptions that may form the basis of a denial of a request. D.C. Code § 2-534.

The DC FOIA was modeled on the corresponding federal Freedom of Information Act. *Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987), and decisions construing the federal statute are instructive and may be examined to construe the local law. *Washington Post Co. v. Minority Bus. Opportunity Comm'n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

#### *D.C. Code § 2-534(3)(A)(i) (“Exemption 3(A)(i)”)*

Exemption 3(A)(i) protects from disclosure investigatory records that are compiled for law enforcement purposes and whose disclosure would interfere with enforcement proceedings. The term “compiled for law enforcement purposes” does not limit the exemption to records that were “originally compiled” or created for that reason. *John Doe Agency v. John Doe Corp.*, 493 U.S. 146, 154, 110 S.Ct. 471, 107 L.Ed.2d 462 (1989). An agency can also establish that such records were later gathered or used for law enforcement purposes at some time before the agency invokes the exemption, even if the information was “generated on an earlier occasion and for a different purpose.” *John Doe*, 493 U.S. at 154, 110 S.Ct. 471. The purpose of the exemption is to prevent “the release of information in investigatory files prior to the completion of an actual, contemplated enforcement proceeding.” *National Labor Relations Bd. v. Robbins Tire & Rubber Co.*, 437 U.S. 124, 232 (1978). “[S]o long as the investigation continues to gather evidence for a possible future criminal case, and that case would be jeopardized by the premature release of the evidence, [the investigatory record exemption] applies.” See *Fraternal Order of Police, Metro. Labor Comm. v. D.C.*, 82 A.3d 803, 815 (D.C. 2014) (internal quotation and citation omitted). Conversely, when an agency fails to establish that the documents sought relate to an ongoing investigation or would jeopardize a future law enforcement proceeding, the investigatory records exemption does not protect the agency’s decision. *Id.*

DCPL has represented that the requested footage shows an incident that “occurred in DCPL’s Anacostia Neighborhood Library meeting room on August 4, 2022” and is evidence for a pending criminal case. DCPL maintains that disclosing the footage could “interfere with the responses of witnesses who are testifying in the grand jury.” In light of the statutory purpose of Exemption 3(A)(i), we find that DCPL has properly withheld the video footage you requested from disclosure.

### Conclusion

Based on the foregoing, we affirm DCPL’s decision and hereby dismiss your appeal.

This constitutes the final decision of this Office. If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with the DC FOIA.

Sincerely,

The Mayor's Office of Legal Counsel

cc: J. Kevin McIntyre, DCPL FOIA Officer (via email only)